

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

RICHARD KAY,	*	
Petitioner,	*	
v.	*	CASE NO. 4:09-CV-42-CDL-GMF
FRED BURNETTE,	*	28 U.S.C. § 2254
		Habeas Corpus Petition
Respondent.	*	

RECOMMENDATION OF DISMISSAL

Petitioner, presently an inmate at Telfair State Prison in Helena, Georgia, has filed the above styled Section 2254 action against the named Respondent. On April 29, 2009, this Court granted Petitioner's Motion for Leave to Proceed *In Forma Pauperis* and ordered petitioner to show cause as to why his action should not be dismissed without prejudice as unexhausted. (R-4). Petitioner filed a Response on May 12, 2009, but the Response failed to comply with the Order to Show Cause, as Petitioner did not state whether he appealed his judgment of conviction or filed any state habeas petitions. (R-5).

WHEREFORE IT IS RECOMMENDED that Petitioner's Application for Federal Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 be **DISMISSED** without prejudice for failure to comply with this Court's Order to Show Cause. Pursuant to 28 U.S.C. § 636 (b)(1), Petitioner may serve and file written objections to this Recommendation with the UNITED STATES DISTRICT JUDGE, WITHIN TEN (10) DAYS after being served with a copy hereof.

SO RECOMMENDED, this 15th day of May, 2009.

S/ G. MALLON FAIRCLOTH
UNITED STATES MAGISTRATE JUDGE

lml